

Chapter 11

Judicial Conduct Commission

78A-11-101 Creation.

In accordance with Article VIII, Section 13 of the Utah Constitution, a Judicial Conduct Commission is created.

Enacted by Chapter 3, 2008 General Session

78A-11-102 Definitions.

As used in this chapter:

- (1) "Commission" means the Judicial Conduct Commission established by Utah Constitution Article VIII, Section 13 and this chapter.
- (2)
 - (a) "Complaint" includes:
 - (i) a written complaint against a judge; or
 - (ii) an allegation based on reliable information received in any form, from any source, that alleges, or from which a reasonable inference can be drawn that a judge is in violation of any provision of Utah Constitution Article VIII, Section 13.
 - (b) "Complaint" does not include an allegation initiated by the commission or its staff.
- (3) "Investigation" means an inquiry into an allegation of misconduct, including a search for and examination of evidence concerning the allegations, which begins upon the receipt of a complaint and is completed when either the complaint is dismissed by a majority vote of the commission or when an order is sent to the Supreme Court for its review in accordance with Utah Constitution Article VIII, Section 13.
- (4) "Judge" includes the chief justice of the Supreme Court, a justice of the Supreme Court, an appellate court judge, a district court judge, an active senior judge, a juvenile court judge, a justice court judge, an active senior justice court judge, and a judge pro tempore of any court of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-11-103 Judicial Conduct Commission -- Members -- Terms -- Vacancies -- Voting -- Power of chair.

- (1) The membership of the commission consists of the following 11 members:
 - (a) two members of the House of Representatives to be appointed by the speaker of the House of Representatives for a four-year term, not more than one of whom may be of the same political party as the speaker;
 - (b) two members of the Senate to be appointed by the president of the Senate for a four-year term, not more than one of whom may be of the same political party as the president;
 - (c) two members of, and in good standing with, the Utah State Bar, who shall be appointed by a majority of the Utah Supreme Court for a four-year term, none of whom may reside in the same judicial district;
 - (d) three persons not members of the Utah State Bar, who shall be appointed by the governor, with the consent of the Senate, for four-year terms, not more than two of whom may be of the same political party as the governor; and

- (e) two judges to be appointed by a majority of the Utah Supreme Court for a four-year term, neither of whom may:
 - (i) be a member of the Utah Supreme Court;
 - (ii) serve on the same level of court as the other; and
 - (iii) if trial judges, serve primarily in the same judicial district as the other.
- (2)
 - (a) The terms of the members shall be staggered so that approximately half of the commission expires every two years.
 - (b) Members of the commission may not serve longer than eight years.
- (3) The commission shall establish guidelines and procedures for the disqualification of any member from consideration of any matter. A judge who is a member of the commission or the Supreme Court may not participate in any proceedings involving the judge's own removal or retirement.
- (4)
 - (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed by the appointing authority for that position for the unexpired term.
 - (b) If the appointing authority fails to appoint a replacement, the commissioners who have been appointed may act as a commission under all the provisions of this section.
- (5) Six members of the commission shall constitute a quorum. Any action of a majority of the quorum constitutes the action of the commission.
- (6)
 - (a) At each commission meeting, the chair and executive director shall schedule all complaints to be heard by the commission and present any information from which a reasonable inference can be drawn that a judge has committed misconduct so that the commission may determine by majority vote of a quorum whether the executive director shall draft a written complaint in accordance with Subsection 78A-11-102(2)(b).
 - (b) The chair and executive director may not act to dismiss any complaint without a majority vote of a quorum of the commission.
- (7) It is the responsibility of the chair and the executive director to ensure that the commission complies with the procedures of the commission.
- (8) The chair shall be nonvoting except in the case of a tie vote.
- (9) The chair shall be allowed the actual expenses of secretarial services, the expenses of services for either a court reporter or a transcriber of electronic tape recordings, and other necessary administrative expenses incurred in the performance of the duties of the commission.
- (10) Upon a majority vote of the quorum, the commission may:
 - (a) employ an executive director, legal counsel, investigators, and other staff to assist the commission; and
 - (b) incur other reasonable and necessary expenses within the authorized budget of the commission and consistent with the duties of the commission.
- (11) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, outlining its procedures and the appointment of masters.

Amended by Chapter 133, 2012 General Session

78A-11-104 Expenses -- Per diem and travel.

- (1) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
 - (a) Section 63A-3-106;

- (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
- (2) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Amended by Chapter 387, 2014 General Session

78A-11-105 Grounds for reprimand, censure, suspension, removal, or involuntary retirement of justice, judge, or justice court judge -- Suspension.

- (1) The commission may issue an order, subject to the Supreme Court's review and issuance of a final order implementing, rejecting, or modifying the commission's order, that any judge be reprimanded, censured, suspended, removed from office, or involuntarily retired, for:
 - (a) action which constitutes willful misconduct in office;
 - (b) final conviction of a crime punishable as a felony under state or federal law;
 - (c) willful and persistent failure to perform judicial duties;
 - (d) disability that seriously interferes with the performance of judicial duties; or
 - (e) conduct prejudicial to the administration of justice which brings a judicial office into disrepute.
- (2) In addition to the reasons specified in Subsection (1), the Supreme Court shall order the reprimand, censure, suspension, removal, or involuntary retirement of any justice court judge who fails to obtain and maintain certification from the Judicial Council for attendance at required judicial training courses or who fails to meet the minimum requirements for office, including residency.
- (3)
 - (a) The Supreme Court may, on its own motion, suspend or remove a judge from office if the judge:
 - (i) develops a physical or mental disability that seriously interferes with the performance of his judicial duties as provided in the Utah Constitution, Article VIII, Section 13, Paragraph 4;
 - (ii) becomes unqualified to hold the judicial office as provided in the Utah Constitution, Article VIII, Sections 7 and 10, and Section 78A-2-221; or
 - (iii) brings the judicial office into disrepute by engaging in conduct prejudicial to the administration of justice as provided in the Utah Constitution, Article VIII, Section 13, Paragraph 5.
 - (b) The Supreme Court shall provide notice to the judge and an opportunity to be heard.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-11-106 Criminal investigation of a judge -- Administrative leave.

- (1)
 - (a)
 - (i) If the commission, during the course of its investigation into an allegation of judicial misconduct, receives information upon which a reasonable person might conclude that a misdemeanor or felony under state or federal law has been committed by a judge other than the chief justice of the Supreme Court, the commission shall immediately refer the allegation and any information relevant to the potential criminal violation to the chief justice of the Supreme Court.
 - (ii)
 - (A) Unless the allegation is plainly frivolous, the commission shall also immediately refer the allegation of criminal misconduct and any information relevant to the potential criminal

violation to the local prosecuting attorney having jurisdiction to investigate and prosecute the crime.

(B) If the local prosecuting attorney receiving the allegation of criminal misconduct of a judge practices before that judge on a regular basis, or has a conflict of interest in investigating the crime, the local prosecuting attorney shall refer the allegation of criminal misconduct to another local or state prosecutor who would not have the same disability or conflict.

(C) The commission may concurrently proceed with its investigation of the complaint without waiting for the resolution of the criminal investigation by the prosecuting attorney.

(b) The chief justice of the Supreme Court may place a justice of the Supreme Court, an appellate court judge, district court judge, active senior judge, juvenile court judge, justice court judge, active senior justice court judge, or judge pro tempore on administrative leave with or without pay if the chief justice has a reasonable basis to believe that the alleged crime occurred, that the justice of the Supreme Court, appellate court judge, district court judge, active senior judge, juvenile court judge, justice court judge, active senior justice court judge, or judge pro tempore committed the crime, and that the crime was either a felony or a misdemeanor which conduct may be prejudicial to the administration of justice or which brings a judicial office into disrepute.

(2)

(a) If the commission, during the course of its investigation into an allegation of judicial misconduct, receives information upon which a reasonable person might conclude that a misdemeanor or felony under state or federal law has been committed by the chief justice of the Supreme Court, the commission shall immediately refer the allegation and any information relevant to the potential criminal violation to two justices of the Supreme Court and the local prosecuting attorney in accordance with Subsection (1)(a)(ii).

(b) Two justices of the Supreme Court may place the chief justice of the Supreme Court on administrative leave with or without pay if the two justices have a reasonable basis to believe that the alleged crime occurred, that the chief justice committed the crime, and that the crime was either a felony or a misdemeanor which conduct may be prejudicial to the administration of justice or which brings a judicial office into disrepute.

(3)

(a) If a judge is or has been criminally charged or indicted for a class A misdemeanor or any felony under state or federal law and if the Supreme Court has not already acted under Subsection (1) or (2), the appropriate member or members of the Supreme Court as provided in Subsection (1) or (2), shall place the judge on administrative leave with or without pay pending the outcome of the criminal proceeding.

(b) The administrator of the courts shall, for the duration of the administrative leave, withhold all employer and employee contributions required under Sections 49-17-301 and 49-18-301.

(c) If the judge is not convicted of the criminal charge, and if after an investigation and final disposition of the case by the Judicial Conduct Commission, the judge is reinstated by the Supreme Court as provided in Subsection (4), then the judge shall be paid the salary or compensation for the period of administrative leave, and all contributions withheld under Subsection (3)(b) shall be deposited in accordance with Sections 49-17-301 and 49-18-301.

(4) The chief justice of the Supreme Court or two justices of the Supreme Court who ordered the judge on administrative leave shall order the reinstatement of the judge:

(a) if the prosecutor to whom the allegations are referred by the commission determines no charge or indictment should be filed; or

(b) after final disposition of the criminal case, if the judge is not convicted of a criminal charge and if the commission has not ordered the removal of the judge.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-11-107 Referral of attorney misconduct.

If the commission, during the course of its investigation into an allegation of judicial misconduct, receives information upon which a reasonable person might conclude that a member of the state bar has violated one of the Rules of Professional Conduct, the commission shall refer that information about the attorney to the Office of Professional Conduct of the Utah State Bar.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-11-108 Involuntary disability retirement or removal of a judge.

- (1) The commission shall recommend and issue an order for the removal or involuntary retirement of a judge of any court of this state, in accordance with the procedure outlined in this section, for a disability that seriously interferes with the performance of the judge's judicial duties and which is, or is likely to become, of a permanent character.
- (2) The commission shall order a medical examination and report.
- (3) The commission in recommending an order of involuntary retirement or removal of a judge for a disability, shall base it on the evaluation and recommendations submitted by one or more medical examiners or physicians, including an examination of essential statements submitted by either bar or judicial associations or committees certifying that:
 - (a) the judge acquires a physical or mental disability and this disability seriously interferes with the performance of the judge's judicial duties; and
 - (b) the judge's incapacity is likely to continue and be permanent and that the judge should be involuntarily retired or removed.
- (4)
 - (a) The Supreme Court shall review the commission's proceedings as to both law and fact and may permit the introduction of additional evidence.
 - (b) After its review, the Supreme Court shall issue its order implementing, rejecting, or modifying the commission's order.
- (5) Retirement or involuntary retirement as provided in this chapter shall be processed through the Utah State Retirement Office, and the judge retiring shall meet the requirements for retirement as specified in this chapter.
- (6) Upon an order for involuntary retirement, the judge shall retire with the same rights and privileges as if the judge retired pursuant to statute.

Amended by Chapter 366, 2011 General Session

78A-11-109 Receipt of complaints.

- (1) The commission shall receive and investigate any complaint against a judge.
- (2) Unless the complaint alleges criminal misconduct, the commission may decline to investigate any complaint received four or more years after the act or omission which constitutes the alleged misconduct.
- (3) During the course of any investigation, the commission may order a hearing to be held concerning the reprimand, censure, suspension, removal, or involuntary retirement of a judge.
- (4) The commission shall provide the judge with all information necessary to prepare an adequate response or defense, which may include the identity of the complainant.

Enacted by Chapter 3, 2008 General Session
Amended by Chapter 274, 2008 General Session

78A-11-110 Hearing.

- (1)
 - (a) A hearing may be conducted before a quorum of the commission.
 - (b) Any finding or order shall be made upon a majority vote of the quorum.
- (2) Alternatively, the commission may appoint three special masters, who are judges of courts of record, to hear and take evidence in the matter and to report to the commission.
- (3)
 - (a) After the hearing or after considering the record and report of the masters, if the commission finds by a preponderance of the evidence that misconduct occurred, it shall order the reprimand, censure, suspension, removal, or involuntary retirement of the judge.
 - (b) When a commission order is sent to the Supreme Court, it shall also be:
 - (i) publicly disclosed; and
 - (ii) sent to the entity that appointed the judge.
 - (c) In recommending any order, including stipulated orders, the commission may not place, or attempt to place, any condition or limitation upon the Supreme Court's constitutional power to:
 - (i) review the commission's proceedings as to both law and fact; or
 - (ii) implement, reject, or modify a commission order.
- (4) When the commission issues any order, including a stipulated order, that is sent to the Supreme Court, the record shall include:
 - (a) the original complaint and any other information regarding violations, or potential violations, of the Code of Judicial Conduct;
 - (b) the charges;
 - (c) all correspondence and other documents which passed between the commission and the judge;
 - (d) all letters which may explain the charges;
 - (e) all affidavits, subpoenas, and testimony of witnesses;
 - (f) the commission's findings of fact and conclusions of law;
 - (g) a transcript of any proceedings, including hearings on motions;
 - (h) a copy of each exhibit admitted into evidence;
 - (i) a summary of all the complaints dismissed by the commission against the judge which contained allegations or information similar in nature to the misconduct under review by the Supreme Court;
 - (j) a summary of all the orders implemented, rejected, or modified by the Supreme Court against the judge; and
 - (k) all information in the commission's files on any informal resolution, including any letter of admonition, comment, or caution, that the commission issued against the judge prior to May 1, 2000.

Enacted by Chapter 3, 2008 General Session

78A-11-111 Supreme Court action.

- (1) Before the implementation, rejection, or modification of any commission order the Supreme Court shall:
 - (a) review the commission's proceedings as to both law and fact and may permit the introduction of additional evidence; and

- (b) consider the number and nature of previous orders issued by the Supreme Court and may increase the severity of the order based on a pattern or practice of misconduct or for any other reason that the Supreme Court finds just and proper.
- (2) After briefs have been submitted and any oral argument made, the Supreme Court shall issue its order implementing, rejecting, or modifying the commission's order.
- (3)
 - (a) Upon an order for removal, the judge shall be removed from office and his salary or compensation ceases from the date of the order.
 - (b) Upon an order for suspension from office, the judge may not perform any judicial functions and may not receive a salary for the period of suspension.

Enacted by Chapter 3, 2008 General Session

78A-11-112 Confidentiality.

- (1) The transmission, production, or disclosure of any complaints, papers, or testimony in the course of proceedings before the commission, the masters appointed under Section 78A-11-110, or the Supreme Court may not be introduced in any civil action.
- (2) The transmission, production, or disclosure of any complaints, papers, or testimony in the course of proceedings before the commission or the masters appointed under Section 78A-11-110 may be introduced in any criminal action, consistent with the Utah Rules of Evidence. This information shall be shared with the prosecutor conducting a criminal investigation or prosecution of a judge as provided in Section 78A-11-106.
- (3) Complaints, papers, testimony, or the record of the commission's confidential hearing may not be disclosed by the commission, masters, or any court until the Supreme Court has entered its final order in accordance with this section, except:
 - (a) upon order of the Supreme Court;
 - (b) upon the request of the judge who is the subject of the complaint;
 - (c) as provided in Subsection (4);
 - (d) to aid in a criminal investigation or prosecution as provided in Section 78A-11-106; or
 - (e) this information is subject to audit by the Office of Legislative Auditor General, and any records released to the Office of Legislative Auditor General shall be maintained as confidential, except:
 - (i) for information that has already been made public; and
 - (ii) the final written and oral audit report of the Legislative Auditor General may present information about the commission as long as it contains no specific information that would easily identify a judge, witness, or complainant.
- (4) If the Senate Judicial Confirmation Committee requests Judicial Conduct Commission records, the commission shall disclose the information to the Senate Judicial Confirmation Committee or its staff if the chair of the Senate Judicial Confirmation Committee certifies in writing that the committee will limit the disclosure of any information received to the minimum amount necessary to allow the Senate to evaluate the candidate's fitness for office.
- (5) Upon the dismissal of a complaint or allegation against a judge, the dismissal shall be disclosed without consent of the judge to the person who filed the complaint.

Amended by Chapter 114, 2009 General Session

78A-11-113 Subpoena power of the commission -- Testimony -- Contempt.

- (1) The commission may issue subpoenas in aid of an investigation of a complaint filed with the commission. The subpoena shall have the same authority as an order of the district court. Commission subpoenas shall be issued in the manner and form prescribed for subpoenas by the Utah Rules of Civil Procedure. Commission subpoenas shall be served in the manner prescribed for subpoenas by the Utah Rules of Civil Procedure.
- (2) The commission may administer oaths and compel testimony under oath in aid of an investigation of a complaint filed with the commission and at hearings before the commission.
- (3) If a person fails to comply with a subpoena, or if a person appears before the commission and refuses to testify to a matter upon which the person may be lawfully questioned, the person is in contempt of the commission, and the commission may file in the district court a motion for an order to show cause why the penalties established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed.

Renumbered and Amended by Chapter 3, 2008 General Session